

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

In re: OHIO EXECUTION
PROTOCOL LITIGATION,

: Case No. 2:11-cv-1016

Chief Judge Edmund A. Sargus, Jr.
Magistrate Judge Michael R. Merz

This Order relates to Plaintiff Cleveland Jackson

DECISION AND ORDER ON MOTIONS FOR DISCOVERY

This capital § 1983 case is before the Court on Plaintiff Cleveland Jackson’s Motion For Leave to Take Rule 30(b)(6) Deposition of Third-Party Governmental Agency Utah Department of Corrections (“Utah Deposition”) (ECF No. 2285); Plaintiff Cleveland Jackson’s Motion for Leave to Conduct Further Discovery (“Jackson Second Discovery Motion,”) ECF No. 2286); and the State Actor Defendants’ Motion for Leave to Conduct Additional Expedited Discovery (ECF No. 2287).

The purpose of the Utah Deposition generally is to obtain sworn testimony regarding Utah’s protocol for execution by firing squad, a subject made relevant by Plaintiff’s pleading that execution by a firing squad would satisfy the alternative method prong of *Glossip v. Gross*, 576 U.S. ___, 135 S.Ct. 2726, 192 L.Ed.2d 761 (2015). The State Actor Defendants have pleaded they have insufficient information to admit or deny Plaintiff Cleveland Jackson’s allegation in this regard (Amended Answer, ECF No. 2249, PageID 108210-11), and have indicated to the Court in two successive telephone status conferences that they are unwilling to stipulate that using a firing

squad would satisfy the *Glossip* test. Jackson's Second Discovery Motion seeks to depose as necessary "the relevant lay and expert witnesses [to be] disclose[d] to the Court [on] July 24, 2019." (ECF No. 2286, PageID 110892). Defendants' Motion seeks discovery of relevant information material to issues raised by Cleveland Jackson's Amended Motion For A Stay Of Execution, A Preliminary Injunction, And An Evidentiary Hearing ("Jackson's Amended Motion") (ECF No. 2287, citing ECF No. 2242).

In opposing Cleveland Jackson's 30(b)(6) Utah Deposition, the State Actor Defendants state, "For the reasons set forth in Defendants' Response in Opposition to Jackson's Motion for a Preliminary Injunction, Defendants continue to maintain that as a matter of law Jackson cannot show that Defendants' execution procedures violate his rights under the Eighth Amendment." (Memo. in Opp., ECF No. 2282, PageID 110870.) If, on the other hand, the Court permits an evidentiary hearing on Cleveland Jackson's motion for that relief, the State Actor defendants do not oppose discovery on alternative methods of execution so long as it is reciprocal. *Id.* at PageID 110871.

Because *Bucklew*, in the Court's judgment, continues to require a comparison between the State's chosen method of execution and an alternative that meets the *Baze/Glossip* test, the Court declines to prohibit further discovery on the grounds that Cleveland Jackson is prevented from offering an alternative method as a matter of law

Plaintiff Jackson's and the State Actor Defendants' reciprocal motions to take additional discovery are GRANTED. This is without prejudice to the Court's resolving any disputes about content or timing which may be raised after discovery requests are served.

July 25, 2019.

s/ ***Michael R. Merz***
United States Magistrate Judge